

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHAEL VACKAR,

Plaintiff,

vs.

ELAN FINANCIAL SERVICES,

Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:15-cv-767

NOTICE OF REMOVAL

Notice is hereby given that pursuant to 28 U.S.C. §§ 1331 and 1446, Defendant U.S. Bank National Association d/b/a Elan Financial Services ("Defendant" or "Elan") removes this action from the Justice Court of Harris County, Texas, Precinct 5, Place 2 to the United States District Court for the Southern District of Texas, Houston Division.

**I.
STATE COURT ACTION**

1. On February 27, 2015, Plaintiff Michael Vackar ("Plaintiff") filed a Small Claims Petition (the "Petition") in the Justice Court of Harris County, Texas, Precinct 5, Place 2 in an action styled: *Michael Vackar v. Elan Financial Services*, Cause No. CV52C0362492 (the "State Court Action").

2. Although unclear, in the State Court Action, Plaintiff alleges that Elan did not respond to his request to validate an unspecified debt, and also violated Section 623(B) of the Fair Credit Report Act ("FCRA"). *See* Petition. Based on the above allegations, Plaintiff asserts an FCRA claim against Elan. *Id.*

3. The State Court Action was filed on February 27, 2015. Therefore, this removal is timely under 28 U.S.C. § 1446(b).

4. The United States District Court for the Southern District of Texas, Houston Division has jurisdiction over this action based on federal question jurisdiction because Plaintiff asserts claims arising under federal law in the State Court Action. *See* 28 U.S.C. § 1331.

II.

PROCEDURAL REQUIREMENTS

5. This action is properly removed to this Court, as the State Court Action is pending within this district and division. *See* 28 U.S.C. § 1441; 28 U.S.C. § 124(b)(2).

6. Pursuant to 28 U.S.C. § 1446(a) and Southern District of Texas Local Rule 81, this Notice of Removal is accompanied by copies of the following materials:

Exhibit A: Index of Matters Being Filed;

Exhibit B: Civil Cover Sheet;

Exhibit C: List of all counsel of record, including addresses, telephone numbers and parties represented;

Exhibit D: Petition;

Exhibit E: Civil Case Information Sheet;

Exhibit F: Citation;

Exhibit G: Official Receipt; and

Exhibit H: Notice of Defendant's Last Known Mailing Address.

7. Simultaneously with the filing of this Notice of Removal, Elan is filing a copy of the Notice of Removal in the Justice Court of Harris County, Texas, Precinct 5, Place 2 pursuant to 28 U.S.C. § 1446(d).

III.

FEDERAL QUESTION JURISDICTION

8. The district courts of the United States have original jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States. *See* 28 U.S.C. §

1331. A case may be removed to federal court if it could have been brought in federal court originally. *See* 28 U.S.C. § 1441(a); *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6, (2003). A claim "arises under" federal law when either (1) the well-pleaded complaint establishes that federal law creates the cause of action; or (2) the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law. *See Singh v. Morris*, 538 F.3d 334, 338 (5th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27–28 (1983)); *see also Empire HealthChoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006).

9. Removal of the State Court Action is proper under 28 U.S.C. §§ 1331 and 1441, as it arises under the laws of the United States. Specifically, Plaintiff asserts an FCRA claim against Elan. *See* Petition. The FCRA expressly grants this Court original jurisdiction to hear such claims. *See* 15 U.S.C. 1681p ("An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy . . ."). Thus, Plaintiff alleges violations of federal law and his right to relief will necessarily depend upon the resolution of federal law. Accordingly, this Court has federal question jurisdiction.

IV. CONCLUSION

WHEREFORE, Elan removes this action from the Justice Court of Harris County, Texas, Precinct 5, Place 2 to the United States District Court for the Southern District of Texas, Houston Division, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

/s/ Marc D. Cabrera

Jason L. Sanders (Attorney-in-Charge)

State Bar No. 24037428

S.D. Bar No. 597751

jsanders@lockelord.com

Marc D. Cabrera

State Bar No. 24069453

S.D. Bar No. 1093318

mcabrera@lockelord.com

LOCKE LORD LLP

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201

T: (214) 740-8000

F: (214) 740-8800

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon Plaintiff *via certified mail, return receipt requested* on this 24th day of March 2015.

/s/ Marc D. Cabrera

Counsel for Defendant